IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 230 OF 2004

Allianz Securities Ltd .... Petitioner
v/s.

Tulip Hospitality Services Ltd .... Respondent

Shri Rishabh Shah i/b. Rajani Associates for the petitioner.
Ms. Usha Purohit for the company.

CORAM: S.U. KAMDAR, J.

DATE : 4TH MARCH, 2005.

P.C. :

1. In the present case the claim amount is of Rs.37,80,000/- as amount due and payable towards the 2% commission for the amount of loan arranged by the petitioner for the respondent company from various Banks and financial institutions. The claim is based on a letter dated 24.11.2001 which was addressed by the petitioner to the respondent company. BY the said letter dated 24.11.2001 an offer is made for arranging a loan aggregating to Rs.100 crores from banks and financial institutions comprising of IDBI, HUDCO, PNB, Bank of India, Bank of Baroda, and Canara Bank. The said offer letter also stipulates that the petitioner will be entitled for 2% of the arranged loan amount and reimbursement of all out of pocket expenses. The company has however by its reply letter dated 26.11.2001 has not accepted the said offer of the petitioner and has stated that the payment of 2%

commission will be the maximum amount and that the actual figures as found viable will be decided by Dr. Kelkar on behalf of the respondent company. It is an admitted position before me that no such percentage of commission was fixed by Dr. Kelkar on behalf of the respondent company but the petitioner contendds that by virtue of their offer letter containing clause of 2% commission a binding agreement has been arrived at. I am not in a position to accept the aforesaid contention because by a reply letter dated 26.11.2001 the company has expressly not accepted the said offer and has put forward a counter proposal of unilaterally fixing the rate of commission when no such commission is fixed by Dr. Kelkar on behalf of the company it can not be said that there is legal, valid and binding agreement of making payment of 2% commission on the loan arranged for the company.

2. Furthermore it is an admitted position before me that the claim of Rs.37,80,000/- is raised in respect of only the amount of loan disbursed by the

Punjab National Bank of sum of Rs.24.00 crores out of sanctioned amount of Rs.30.00 crores. According to the petitioner themselves they were supposed to arrange Rs1,000 million from various banks and financial institutions under his offer letter dated 26.11.2001. Admittedly by balance of other loans are not arranged thus there is non-performance of the contract by the petitioner themselves and thus in my opinion in the present case various issues are required to be tried. Therefore the company has made out bonafide defences to the claim of the petitioner. Thus, the present petition cannot be entertained under section 433 and 434 of the Companies Act-I of 1956. The petition is dismissed with no order as to costs.

sd/-

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